

S/N 09/893,091

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Ravindra K. Shetty et al.	Examiner:	Peter H. Choi
Serial No.:	09/893,091	Group Art Unit:	3623
Filed:	June 27, 2001	Docket:	H0002099.33506
Title:	SYSTEM AND METHOD FOR BUSINESS GOAL-OPTIMIZATION WHEN CUSTOMER DEMAND CANNOT BE SATISFIED		

APPELLANT'S REPLY BRIEF UNDER 37 C.F.R. § 41.41

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This replies to the Examiner's Answer that was mailed on April 30, 2008. The Appellant notes that this Reply Brief is the same as the Reply Brief that was submitted in response to the Examiner's Answer that was mailed on October 10, 2007. The Appellant exercises an abundance of caution and re-submits its Reply Brief so that the Appellant is assured that its Reply Brief will be considered.

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REPLY

The claimed subject matter recites in part an “inverse of the probability of profit of [a] product.” The Examiner’s Answer on page 5 admits that the reference of record, Kennedy et al., does not teach the step of determining the reduced quantity based on an inverse profit probability. The only thing that the Examiner’s Answer can put forth is that Kennedy et al. implicitly teaches the step of identifying the most profitable products of a group of products that would enable the maximization of profits. The Appellant respectfully submits that the identification of the most profitable products in order to maximize profits is simply not an “inverse of the probability of profit of [a] product” as recited in the claimed subject matter.

On pages 35 and 36 of the Examiner’s Answer, the Examiner goes to great lengths to explain his interpretation of the “inverse of the probability of profit.” Specifically, the Examiner claims that no weight has been given to the name “inverse”, but rather weight has been given to the mathematical expression for “*inverse_profit_probability*” found in Table 4 of the Appellant’s specification. The Examiner then substantially repeats the Appellant’s disclosure from page 13, lines 25-30 of the specification. Fair enough. However, the Examiner goes on to argue that if a “true inverse” was meant to be calculated, the reciprocal of the Appellant’s *inverse_profit_probability* would be taken, which would not yield a mathematically correct answer. The Examiner then states that he has interpreted “inverse profit probability” as the percentage of profit of each product within a plurality of products. The Appellant respectfully disagrees with the Examiner’s analysis.

First, if the Examiner is not giving weight to the term “inverse,” because in part that the *inverse_profit_probability* can be found in Table 4 of the specification, then why does the Examiner feel the need to argue that a “true inverse” would involve a reciprocal, and that such a reciprocal would generate an allegedly incorrect mathematical result? A reciprocal is found neither in the Appellant’s disclosure nor in the cited reference, and the Appellant respectfully submits that this discourse is simply irrelevant. Moreover, it serves only to shed confusion in its attempt to avoid the straightforward analysis resulting

from considering the Appellant's disclosure, and it further serves only to support the Examiner's contention that equates the claimed inverse probability of profit with Kennedy's percentage of profit of each product within a plurality of products.

Second, as just noted, the Examiner concludes that the proper interpretation of the inverse probability of profit is the percentage of profit of product within a plurality of products. The Appellant respectfully submits that the Examiner is simply redefining the Appellant's disclosure so that the Appellant's claimed subject matter then appears to be the same as the disclosure of the reference of record. The Appellant respectfully submits that it is improper to take the disclosure of the cited reference, ignore the disclosure of the Appellant, and redefine the disclosure of the Appellant to fit the cited reference. In this case, the Examiner has redefined the *inverse_profit_probability* to fit the cited reference even though, as admitted by the Examiner, an example mathematical expression for the *inverse_profit_probability* can be found in the Applicant's disclosure in Table 4 and further interpretation and/or definition by the Examiner is not necessary. With all due respect, the Examiner's discussion of reciprocals and mathematically incorrect results clouds the fact that the cited reference simply does not disclose the feature of an *inverse_profit_probability* as it is defined in the Appellant's specification.

In short, equating the Appellant's *inverse_profit_probability* with Kennedy's identification of the most profitable products and the maximization of profits must fail. Consequently, a *prima facie* case of obviousness has not been established, and the rejection of the claims should be reversed.

Lastly, the Appellant stands by its assertion that it has properly and timely challenged the Examiner's use of Official Notice. As noted in Appellant's principal brief, as required by *In re Chevenard*, the Appellant demanded that the Examiner produce authority for its statement. The Examiner has simply refused to do this however. The Appellant continues to respectfully submit that it is not possible for it to prove a negative, that is, to prove why the noticed fact is *not* considered to be common knowledge. Notwithstanding, even assuming for the sake of argument that the subject matter of the Official Notice is accurate, that is, that it is well-known that manufacturers will identify

the most profitable products in a set, that adds no more to the Examiner's case for obviousness than the statement in Kennedy et al. that relates to the optimization of profits. For neither the identification of the most profitable products in a set, nor the optimization of profits, would have led one of skill in the art to come up with the Appellant's novel inverse profitability of profit, which has the practical application of providing information that allows the most profitable use of a process to produce products.

Conclusion

The pending claims subject to this appeal are believed patentable. Appellant respectfully submits the claims are in condition for allowance and requests the Board issue an order to withdraw the rejections of claims 1-60.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: MS Appeal Brief, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 19th day of May, 2008.

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